

Title 35-A: PUBLIC UTILITIES

Chapter 47: GAS UTILITIES

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Maine Revised Statutes
Title 35-A: PUBLIC UTILITIES
Chapter 47: GAS UTILITIES

§4701. GAS UTILITIES AUTHORIZED TO DEAL IN NATURAL GAS

Any gas utility is authorized to buy, sell, furnish, transport, store, distribute, dispose of or otherwise deal in natural gas and a mixture of natural gas and manufactured gas and their by-products, to the same extent and with the same rights, privileges and limitations conferred or imposed upon it with respect to manufactured gas, and within the same territorial limitations within which it is authorized to deal in manufactured gas. [1987, c. 141, Pt. A, §6 (NEW).]

SECTION HISTORY

1987, c. 141, §A6 (NEW).

§4702. SAFETY JURISDICTION ONLY OVER CERTAIN GAS UTILITIES
(REPEALED)

SECTION HISTORY

1987, c. 141, §A6 (NEW). 1999, c. 718, §15 (RPR). 2011, c. 197, §1 (RP).

§4702-A. SAFETY JURISDICTION ONLY OVER CERTAIN GAS UTILITIES

The commission may regulate certain gas utilities in accordance with this section as an agent of the United States Department of Transportation Pipeline and Hazardous Materials Safety Administration pursuant to 49 United States Code, Section 60105. [2011, c. 197, §2 (NEW).]

1. Jurisdiction. A gas utility owning, controlling, operating or managing a central tank system or a liquefied petroleum gas system is subject to the jurisdiction of the commission solely with respect to safety if that system serves:

A. Ten or more customers; [2011, c. 197, §2 (NEW).]

B. More than one customer and any portion of the central tank system or liquefied petroleum gas system is located in a public place; or [2011, c. 197, §2 (NEW).]

C. One customer and a portion of the central tank system or liquefied petroleum gas system is located off the customer's premises in a public place. [2011, c. 197, §2 (NEW).]

In regulating gas utilities under this section, the commission may not interpret "public place" to include a motel room, hotel room, rented cottage or other rented or leased living space unless the commission receives written notice from the United States Department of Transportation Pipeline and Hazardous Materials Safety Administration that this exclusion is incompatible with the administration's interpretation of 49 Code of Federal Regulations, Section 192.1 and the commission by rule establishes a definition of "public place" consistent with that written notice. Rules adopted under this subsection are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A.

[2011, c. 197, §2 (NEW) .]

2. Limitations; liquefied petroleum gas systems. Regulation of liquefied petroleum gas systems under this section is governed by this subsection. As used in this subsection, unless the context otherwise indicates, "jurisdictional system" means a liquefied petroleum gas system subject to the jurisdiction of the United States Department of Transportation Pipeline and Hazardous Materials Safety Administration under 49 Code of Federal Regulations, Section 192.1, and "operator" means the operator of a jurisdictional system.

A. The commission may regulate liquefied petroleum gas systems only to the extent the system is subject to the jurisdiction of the United States Department of Transportation Pipeline and Hazardous Materials Safety Administration under 49 Code of Federal Regulations, Section 192.1. [2011, c. 197, §2 (NEW) .]

B. The commission shall regulate jurisdictional systems and operators under this section in accordance with the minimum standards established by the United States Department of Transportation Pipeline and Hazardous Materials Safety Administration as adopted by reference by the commission by rule. Rules adopting by reference the minimum standards established by the United States Department of Transportation Pipeline and Hazardous Materials Safety Administration are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. [2011, c. 197, §2 (NEW) .]

C. The commission may not adopt or enforce any rule governing jurisdictional systems or operators, including but not limited to rules establishing definitions or standards, except as specifically authorized in this paragraph, paragraph B or subsection 1. The commission may by rule:

- (1) Identify and certify operators;
- (2) Require jurisdictional systems to be registered with the commission. The commission may not impose an administrative penalty under section 1508-A that exceeds \$5,000 for failure to register a jurisdictional system;
- (3) Prohibit delivery of liquefied petroleum gas to a customer if an operator has determined that piping or other equipment owned by the customer makes continued delivery unsafe. Nothing in this subparagraph permits the commission to require an operator to inspect, maintain or otherwise oversee customer-owned piping or other equipment;
- (4) Require operators to participate in the underground facility damage prevention system established under Title 23, section 3360-A;
- (5) Define "combustible material";
- (6) Establish reasonable requirements for operators to keep on file maps or drawings of jurisdictional systems;
- (7) Establish reasonable standards for the protection of jurisdictional systems from reasonably foreseeable damages that may be caused by motorized vehicles or snow, ice or other weather-related conditions;
- (8) Establish reasonable requirements for the installation of warning tape and tracer wires on plastic pipes installed by operators;
- (9) Establish reasonable requirements for operators to mark containers owned by the operators and located on customer property;
- (10) Establish reasonable requirements for the use of directional boring by operators for the installation of piping for jurisdictional systems;
- (11) Establish reasonable odor verification requirements for liquefied petroleum gas delivered to customers by operators; and
- (12) Establish enforcement procedures. The enforcement procedures must provide for informal disposition of possible violations, including procedures that allow a person to correct a violation without penalty, informal conferences to resolve disputes about violations, consent agreements

to resolve enforcement actions and other means of avoiding adjudicatory proceedings and the imposition of administrative penalties when informal means of enforcement are adequate to ensure public safety.

Rules adopted under this paragraph are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A. [2011, c. 197, §2 (NEW).]

D. In applying the atmospheric corrosion control standards established by the United States Department of Transportation Pipeline and Hazardous Materials Safety Administration to liquefied petroleum gas systems, the commission shall consider atmospheric corrosion to be a condition exhibiting signs of deterioration, including pitting or loss of metal. The commission may not consider surface rust or loss of paint coating to constitute atmospheric corrosion. [2011, c. 197, §2 (NEW).]

[2011, c. 197, §2 (NEW) .]

SECTION HISTORY

2011, c. 197, §2 (NEW).

§4703. COST OF GAS ADJUSTMENT

1. Cost of gas; related costs. Subject to the approval of the commission, each gas utility shall charge its customers a cost-of-gas adjustment rate that includes reasonable costs for the gas that it supplies to its firm sales customers who receive uninterrupted service on a year-round basis. The cost of gas includes the cost of the gas purchased by the company for use in the State and may include costs directly related to the gas purchased and may include all or a portion of the cost of facilities used to produce and store gas, pursuant to rules adopted by the commission under this section.

[1997, c. 707, §5 (AMD) .]

2. Cost of gas adjustment for firm and nonfirm customers.

[1997, c. 707, §6 (RP) .]

2-A. Cost-of-gas adjustment for firm sales customers. Subject to the conditions of this section, a gas utility shall periodically adjust its cost-of-gas adjustment clause charges to its firm sales customers to reflect increases and decreases in the cost of gas. For purposes of this section, a "firm sales customer" means a customer that receives uninterrupted gas supply and transportation service from the gas utility on a year-round basis. Subject to the approval of the commission, the cost-of-gas adjustment charge must be billed at a uniform rate per 100 therms or 100 cubic feet of gas for customers of the gas utility receiving service pursuant to the same rate schedule.

[1997, c. 707, §7 (NEW) .]

2-B. Cost-of-gas adjustment for nonfirm customers. The rates charged to nonfirm customers include a cost of gas determined by the commission. The total rate charged to nonfirm customers is subject to the approval of the commission.

[1997, c. 707, §7 (NEW) .]

3. Scope of adjustment. The costs described in subsection 1 constitute the only items subject to adjustment, pursuant to rules adopted by the commission under this section, except that the commission may credit against the cost of gas any and all profits received by the gas utility from sales of gas to interruptible customers to the extent that the revenues exceed the actual costs of the interruptible sales.

[1997, c. 707, §8 (AMD) .]

4. Cost of gas adjustment rate applied uniformly to firm customers.

[1997, c. 707, §9 (RP) .]

5. Rules for calculation and billing of cost of gas adjustment. Within 120 days following the effective date of this section, the commission shall establish rules for the calculation and billing of cost of gas adjustments. The rules shall include, but not be limited to:

A. The accounting method to be used to determine the cost of gas; [1987, c. 141, Pt. A, §6 (NEW) .]

B. The computation period and method of computation of the cost of gas adjustment rate; [1987, c. 141, Pt. A, §6 (NEW) .]

C. Definitions and components of gas costs to be included in the cost of gas adjustment; [1987, c. 141, Pt. A, §6 (NEW) .]

D. An appropriate method to amortize a utility's unrecovered reasonable gas costs; [1987, c. 141, Pt. A, §6 (NEW) .]

E. An appropriate method to credit customers for gas cost overcharges; and [1987, c. 141, Pt. A, §6 (NEW) .]

F. Reporting requirements to administer this section. [1987, c. 141, Pt. A, §6 (NEW) .]

The commission may establish a cost of gas adjustment rate for a computation period based on projected gas sales and gas costs for that period, and make appropriate adjustments for overcharges or undercharges in customer bills in subsequent computation periods to account for the difference between the projected gas sales and costs and actual gas sales and reasonable gas costs.

[1987, c. 141, Pt. A, §6 (NEW) .]

6. Commission approval required. A utility may not bill customers for a cost of gas adjustment charge which has not been approved and ordered into effect by the commission pursuant to this section. Each gas utility shall file application for changes in its cost of gas adjustment rate in accordance with rules promulgated under this section. The commission shall issue public notice of the application and the opportunity to request a hearing within 7 days after the application is filed with the commission. The commission may render its decision on the application without holding a public hearing. If a public hearing is held, the commission shall hold the first session within 45 days of the filing of the application. The commission shall render its decision on the application within 45 days of the close of the hearing, or within 45 days of receipt of the application if no hearing is held. No gas utility may make application for changes in its cost of gas adjustment rate until a period of 90 days has elapsed from the filing of its last application, unless otherwise ordered by the commission.

[1987, c. 141, Pt. A, §6 (NEW) .]

7. Reports. The commission may require gas utilities to provide such reports and information as it determines necessary to administer this section.

[1987, c. 141, Pt. A, §6 (NEW) .]

SECTION HISTORY

1987, c. 141, §A6 (NEW). 1997, c. 707, §§5-9 (AMD).

§4703-A. NATURAL GAS FOR USE IN VEHICLES

The following provisions govern the creation of subsidiaries or affiliates of gas utilities for the purpose of selling gas for use in vehicles fueled by natural gas. [1993, c. 178, §2 (NEW) .]

1. Policy and findings. The Legislature finds that it is in the best interests of this State that the sale of natural gas for use as fuel in vehicles take place in an unregulated environment. The Legislature finds that entities that assume the risk of investment in the business of selling natural gas for use as a fuel in vehicles are entitled to the rewards and should be responsible for the costs of engaging in that business. It is the policy of the Legislature, in authorizing the creation of certain unregulated entities under this section, that ratepayers of gas utilities should not, as ratepayers, contribute to or benefit from the unregulated activity of those entities.

[1993, c. 178, §2 (NEW) .]

2. Creation of subsidiary or affiliate. Notwithstanding section 708, a gas utility may create without commission approval a wholly owned subsidiary or affiliate corporation whose sole purpose is to sell gas for use in vehicles fueled by natural gas, provided that:

A. The creation of the wholly owned subsidiary or affiliate does not result in ratepayers of the gas utility directly or indirectly contributing to or benefiting from the activities of the wholly owned subsidiary or affiliate and does not otherwise adversely affect ratepayers of the gas utility; and [1993, c. 178, §2 (NEW) .]

B. The creation of a subsidiary or affiliate does not impair the ability of the gas utility to provide safe, reasonable and adequate service. [1993, c. 178, §2 (NEW) .]

[1993, c. 178, §2 (NEW) .]

3. Rates for sales by gas utility. The rate for any sale of gas by a gas utility to a subsidiary or affiliate corporation created pursuant to this section or to any other entity that provides natural gas for use in vehicles must exceed the actual cost of the gas sold and include a contribution to the fixed costs of the utility. The commission may not find that the cost of gas sold to other customers of the utility has been increased as a result of any sale of gas by the utility at a rate that meets the requirements of this section.

[1993, c. 178, §2 (NEW) .]

4. Allocation of earnings. The commission may not allocate earnings of a wholly owned subsidiary or affiliate created pursuant to this section in a manner that benefits the customers of a gas utility.

[1993, c. 178, §2 (NEW) .]

5. Separate books and records. A subsidiary or affiliate created pursuant to this section shall maintain separate and independent books, accounts and records.

[1993, c. 178, §2 (NEW) .]

6. Access to books and records. A gas utility shall provide the commission with reasonable access to books, records, documents and other information of the gas utility related to a subsidiary or affiliate corporation created pursuant to this section.

[1993, c. 178, §2 (NEW) .]

7. Reasonableness of transaction. In a commission proceeding pursuant to section 307, 1303 or 4703, a gas utility shall demonstrate that all transactions with a subsidiary or affiliate corporation created by the utility pursuant to this section were reasonable.

[1993, c. 178, §2 (NEW) .]

8. Commission oversight. Notwithstanding the provisions of section 707, transactions between a gas utility and a subsidiary or affiliated interest created pursuant to this section do not require preapproval by the commission.

[1993, c. 178, §2 (NEW) .]

9. Investment by utility. Except as otherwise provided in this subsection, a gas utility that creates a subsidiary or affiliate corporation pursuant to this section may not invest in that subsidiary or affiliate corporation an amount greater than 1% of the gas utility's total retail revenues. Upon request of a gas utility, the commission, after notice and hearing, may permit an investment greater than 1% of the utility's total retail revenues.

[1993, c. 178, §2 (NEW) .]

10. Regulation of gas utility. Except as expressly provided in this section, nothing in this section exempts a gas utility from any laws, principles and rules governing the regulation of public utilities.

[1993, c. 178, §2 (NEW) .]

11. Subsidiary or affiliate created by the parent corporation of a gas utility. If a subsidiary or affiliated interest is created by the parent corporation of a gas utility for the purpose of supplying natural gas for use in vehicles, only the following provisions apply.

A. If the subsidiary or affiliate does any business in this State, the parent corporation shall provide the commission with reasonable access to books, records, documents or other information of the parent corporation related to that subsidiary or affiliate. [1993, c. 178, §2 (NEW) .]

B. In a commission proceeding pursuant to section 307, 1303 or 4703, a gas utility shall demonstrate that all transactions with a subsidiary or affiliate of a parent corporation were reasonable. [1993, c. 178, §2 (NEW) .]

For purposes of this subsection, the term "parent corporation" means an affiliated interest, as defined in section 707, subsection 1, paragraph A, subparagraphs (1), (2) and (4), of a gas utility that is not itself a gas utility in this State.

[1993, c. 178, §2 (NEW) .]

12. Limitations. Except as provided in this section, the sale by a person, not otherwise a gas utility, of natural gas directly to customers for use in vehicles fueled by natural gas is not subject to regulation by the commission.

[1993, c. 178, §2 (NEW) .]

SECTION HISTORY

1993, c. 178, §2 (NEW) .

§4704. CEASE AND DESIST ORDERS

The commission may order a gas utility to cease and desist from operating or acting in violation of a statute or rule or order of the commission. Whenever practicable, the commission shall notify a gas utility against whom a cease and desist order is contemplated and afford it an opportunity to present its views and shall afford it reasonable opportunity to comply. Failure to notify and afford such an opportunity does not preclude the granting of appropriate relief. [2003, c. 505, §36 (AMD) .]

SECTION HISTORY

1987, c. 141, §A6 (NEW). 2003, c. 505, §36 (AMD) .

§4705. CIVIL FORFEITURE**(REPEALED)**

SECTION HISTORY

1987, c. 141, §A6 (NEW). 1993, c. 113, §2 (AMD). 2003, c. 505, §37 (RP).

§4705-A. ADMINISTRATIVE PENALTY

1. Violation of this Title. The commission may impose an administrative penalty on a gas utility that violates any provision of this Title relating to safety of gas facilities or any rule issued under this Title in an amount not to exceed \$200,000 for each violation. Each day of violation constitutes a separate offense.

[2013, c. 495, §2 (AMD) .]

2. Maximum administrative penalty. The maximum administrative penalty may not exceed \$2,000,000 for any related series of violations.

[2013, c. 495, §2 (AMD) .]

3. Determining amount of penalty. In determining the amount of the penalty, the commission shall consider the following:

- A. The nature, circumstances and gravity of the violation; [2003, c. 505, §38 (NEW) .]
- B. The degree of the gas utility's culpability; [2003, c. 505, §38 (NEW) .]
- C. The gas utility's history of prior offenses; [2003, c. 505, §38 (NEW) .]
- D. The gas utility's ability to pay; [2003, c. 505, §38 (NEW) .]
- E. Any good faith by the gas utility in attempting to achieve compliance; [2003, c. 505, §38 (NEW) .]
- F. The effect on the gas utility's ability to continue in business; and [2003, c. 505, §38 (NEW) .]
- G. Such other matters as justice may require. [2003, c. 505, §38 (NEW) .]

[2003, c. 505, §38 (NEW) .]

4. Payment of penalty. The amount of the penalty may be:

- A. Deducted from any sums owing by the State to the gas utility; or [2003, c. 505, §38 (NEW) .]
- B. Recovered in a civil action in the state courts. [2003, c. 505, §38 (NEW) .]

[2003, c. 505, §38 (NEW) .]

5. Limitation on imposing penalty. Any action that may result in the imposition of an administrative penalty pursuant to this section must be commenced within 5 years after the cause of action accrues.

[2003, c. 505, §38 (NEW) .]

SECTION HISTORY

2003, c. 505, §38 (NEW). 2013, c. 495, §2 (AMD).

§4706. COMMISSION AUTHORITY TO ADOPT ALTERNATIVE RATE-MAKING MECHANISMS

1. Alternative rate-making mechanisms. This Title may not be construed to prohibit the commission from or to restrict the commission in establishing or authorizing any reasonable alternative rate-making mechanisms for gas utilities to promote efficiency in operations, create appropriate financial incentives, promote rate stability and promote equitable cost recovery. Alternative rate-making mechanisms may include, but are not limited to:

- A. Multiyear rate-making plans that cap or otherwise establish mechanisms for future rate or revenue changes; [1997, c. 707, §10 (NEW).]
- B. Reconciliation of actual revenues or costs with projected revenues or costs; [1997, c. 707, §10 (NEW).]
- C. Adjustment of rates or revenues based on the use of any index, formula, forecast or projection; [1997, c. 707, §10 (NEW).]
- D. Adjustment of rates or revenues based on an earnings-sharing, range-of-freedom or rate-stability plan; [1997, c. 707, §10 (NEW).]
- E. Positive or negative financial incentives; and [1997, c. 707, §10 (NEW).]
- F. Streamlined regulation or deregulation of services or entities when regulation is not required to protect the public interest. [1997, c. 707, §10 (NEW).]

In adopting an alternative rate-making mechanism, the commission may consider the costs of regulation, the benefits of the rate plan to the utility and to ratepayers, the impact on economic development, the reallocation of risk between investors and ratepayers, the development of a competitive market for gas services that are not natural monopolies and any other factor relevant to the establishment or authorization of an alternative rate-making mechanism. Prior to adopting an alternative rate-making mechanism, the commission shall consider the need for a rate case in order to establish a base line for the alternative rate-making mechanism.

[1997, c. 707, §10 (NEW) .]

2. Adoption of rate-making mechanisms. Upon the filing of an application for a rate plan by a gas utility, or upon the commission's own motion, the commission, in an adjudicatory proceeding, may adopt alternative rate-making mechanisms for any gas utility in the State. The alternative rate-making mechanisms need not conform with chapter 3 to the extent that the provisions of chapter 3 require the use of rate-base, rate-of-return or any other specific form of regulation of the rates of a gas utility or to the extent that the provisions of chapter 3 give any party, including the gas utility, the right to petition to change rates for gas services. This section may not be construed to limit the authority of the commission under section 1322.

[1997, c. 707, §10 (NEW) .]

3. Just and reasonable rates. In determining the reasonableness of any rate-adjustment mechanism established under this subchapter, the commission shall apply the standards of section 301 to ensure that the rates resulting from the implementation of a rate-adjustment mechanism are just and reasonable. Prior to the adoption of a new or replacement alternative rate plan or renewal of any existing alternative rate plan, the commission shall, in order to ensure that rates at the starting point of the plan are just and reasonable, conduct a revenue requirement and earnings review pursuant to the standards of section 301. In conducting such a review under this subsection, the commission, at its discretion, may conduct the review in a manner designed to minimize the cost of the review to ratepayers.

[2003, c. 45, §2 (AMD) .]

4. General safeguards. In adopting alternative rate-making mechanisms, the commission shall consider appropriate consumer and competitive safeguards.

[1997, c. 707, §10 (NEW) .]

5. Rate flexibility. Notwithstanding sections 307 and 703, the commission, in an adjudicatory proceeding, may authorize a gas utility to implement a program under which:

A. The utility may change its schedule of rates with limited notice to the commission; and [1997, c. 707, §10 (NEW) .]

B. The utility may enter into contracts for the sale of gas, transmission and distribution services and related management services with limited or no prior approval by the commission. [1997, c. 707, §10 (NEW) .]

The commission shall establish the terms and conditions under which a program is authorized under this subsection.

[1997, c. 707, §10 (NEW) .]

6. Amendment to multiyear rate plans. The commission may not amend or prematurely terminate the terms of a multiyear rate plan in a manner that prevents or threatens the utility's opportunity to recover a reasonable rate of return over the entire term of the plan. The commission shall ensure compliance with the requirements of this subsection in the revenue requirement proceeding and earnings review required by subsection 3.

[2003, c. 45, §2 (AMD) .]

7. Authority. The authority granted to the commission under this section is in addition to the authority of the commission granted under other provisions of this Title and this section may not be construed to limit the authority of the commission under any other provision of this Title.

[1997, c. 707, §10 (NEW) .]

8. Cost-of-gas adjustment. As part of the implementation of alternative rate-making mechanisms pursuant to this section, the commission may waive or modify the requirements of section 4703 to the extent necessary to promote efficiency in operation, appropriate financial incentives, rate stability or equitable cost recovery.

[1997, c. 707, §10 (NEW) .]

9. Report. The commission shall include in its annual report pursuant to section 120, subsection 6 any significant developments with respect to any actions taken or proposed to be taken by the commission under this section.

[2009, c. 122, §16 (AMD) .]

SECTION HISTORY

1997, c. 707, §10 (NEW). 2003, c. 45, §2 (AMD). 2009, c. 122, §16 (AMD).

§4706-A. SPECIAL RATE ARRANGEMENTS FOR ELIGIBLE LOW-INCOME CUSTOMERS

(REPEALED)

SECTION HISTORY

1999, c. 664, §1 (NEW). 2009, c. 35, §1 (RP).

§4706-B. ASSISTANCE PROGRAMS FOR LOW-INCOME CUSTOMERS

1. Programs. Each gas utility in the State that serves 5,000 or more residential customers shall offer low-income assistance programs for residential customers who satisfy criteria for low-income assistance as established by the commission in rule. To the maximum extent possible, a gas utility, in adopting and implementing a low-income assistance program under this section, shall seek to encourage conservation in the use of gas by program participants.

[2009, c. 35, §2 (NEW) .]

2. Cost recovery. The commission shall include in rates for a gas utility all costs incurred in compliance with this section and commission rules adopted under this section, as long as such costs have been prudently incurred.

[2009, c. 35, §2 (NEW) .]

3. Rules. The commission may adopt rules necessary to implement this section. Rules adopted under this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[2009, c. 35, §2 (NEW) .]

4. Report. The commission shall report on low-income assistance programs offered by gas utilities pursuant to this section within the annual report required under section 120.

[2009, c. 35, §2 (NEW) .]

SECTION HISTORY

2009, c. 35, §2 (NEW).

§4707. STRANDED COSTS; NOTICE OF RISK

Notwithstanding any other provision of this Title, costs arising from obligations incurred by a gas utility after March 1, 1998, other than costs or obligations that are beyond the control of the gas utility, determined by the commission in an adjudicatory proceeding to be unrecoverable as a result of competition or deregulation are incurred at the risk of the shareholders of the gas utility and may not be borne by ratepayers of the gas utility. This section may not be interpreted as requiring that costs incurred prior to March 1, 1998 be recovered from ratepayers. [1997, c. 707, §10 (NEW).]

SECTION HISTORY

1997, c. 707, §10 (NEW).

§4708. GAS MARKETER REGISTRATION

1. Registration required. Unless registered with the commission under this section, a gas marketer may not contract or attempt to contract with any retail natural gas consumer in this State to provide natural gas supply service.

[1999, c. 143, §3 (NEW) .]

2. Required information. A gas marketer registering under this section shall provide:

A. The name, mailing address and phone number of the gas marketer; and [1999, c. 143, §3 (NEW) .]

B. The name, mailing address and phone number of a contact person who is knowledgeable regarding the gas marketer's activities in the State. [1999, c. 143, §3 (NEW).]

A gas marketer registered under this section shall promptly provide the commission with any additional relevant information requested by the commission, including, but not limited to, copies of any residential contracts for retail natural gas supply service. The commission shall provide through the issuance of protective orders pursuant to section 1311 for appropriate confidentiality protection as necessary for any information provided under this section.

[1999, c. 143, §3 (NEW) .]

3. Contracts void. Any contract for retail natural gas supply service entered into after the effective date of this section by a gas marketer that is not registered with the commission under this section is deemed void.

[1999, c. 143, §3 (NEW) .]

SECTION HISTORY

1999, c. 143, §3 (NEW).

§4709. NATURAL GAS UNBUNDLING

1. Commission rulemaking. In order to foster the unbundling of natural gas services and the development of a competitive natural gas supply market in the State, the commission shall consider the need for and may adopt rules in the following areas:

A. The need to license gas marketers; [1999, c. 143, §3 (NEW).]

B. The need for a code of conduct governing the relationship between a gas utility and an affiliated gas marketer to prevent the affiliated gas marketer's exercise of market power and to ensure fair competition among all gas marketers; [1999, c. 143, §3 (NEW).]

C. The need for regulations to protect consumers from abusive practices by gas marketers; and [1999, c. 143, §3 (NEW).]

D. Any other subject of natural gas unbundling that requires additional regulation. [1999, c. 143, §3 (NEW).]

[1999, c. 143, §3 (NEW) .]

2. Major substantive rules. Rules adopted under this section are major substantive rules pursuant to Title 5, chapter 375, subchapter II-A.

[1999, c. 143, §3 (NEW) .]

SECTION HISTORY

1999, c. 143, §3 (NEW).

§4710. EMINENT DOMAIN

Subject to the provisions of this section, a natural gas utility may take and hold by right of eminent domain lands or rights in lands necessary to the safe, economical and efficient operation of a pipeline and to the provision of adequate service to the public. For purposes of this section, the term "natural gas utility" means an intrastate natural gas pipeline utility or a gas utility other than a gas utility over which the commission's jurisdiction is limited pursuant to section 4702-A. [2011, c. 197, §3 (AMD).]

1. Conditions and standards. A natural gas utility may take and hold by right of eminent domain lands or rights in lands necessary to the safe, economical and efficient operation of the pipeline and to the provision of adequate service to the public if:

A. The natural gas utility has obtained from the commission:

- (1) In the case of a gas utility, authority to provide gas utility service to the area to be served by the proposed pipeline; or
- (2) In the case of an intrastate natural gas pipeline utility, authority pursuant to chapter 45 to construct and operate the proposed pipeline; [1999, c. 605, §2 (NEW); 1999, c. 605, §3 (AFF).]

B. The natural gas utility has complied with the provisions of this chapter and in the case of a foreign natural gas utility with Title 13-C, chapter 15; [2001, c. 2, Pt. B, §58 (AFF); 2001, c. 2, Pt. B, §57 (COR).]

C. The natural gas utility has obtained from the commission approval of the location to be taken in a proceeding conducted in accordance with the following.

- (1) The commission shall fix a time for a hearing and give written notice of the hearing to the property owner and to the utility seeking to acquire the property. The hearing must be held in the county where the property is situated, unless all parties agree to a different location. At the hearing, all parties in interest may be heard either in person or by attorney, and witnesses may be summoned by either party and attendance compelled as before other judicial tribunals.
- (2) The burden of proof to show the necessity of the particular taking rests on the utility seeking to acquire the property.
- (3) The decision of a majority of the commissioners is final as to questions of fact.
- (4) The commission must issue a written approval if it finds that the taking is necessary and in the public interest, except that the commission's examination of environmental issues affecting the public interest may consist only of whether the natural gas utility has obtained required environmental permits for the proposed pipeline, excluding permits that the utility can not obtain without possessing rights in the property proposed to be taken.
- (5) The commission shall issue a written decision within 30 days of a filing of a request for approval, except that the commission may extend its review of the request for an additional 30 days if it determines additional time is necessary to adequately complete its review. The commission may extend its review for more than an additional 30 days if a party requests an extension of more than 30 days and the commission finds that the additional time is required to avoid unfairness to a party; and [1999, c. 605, §2 (NEW); 1999, c. 605, §3 (AFF).]

D. The right of eminent domain is exercised in the manner and under the conditions set forth in chapter 65. [1999, c. 605, §2 (NEW); 1999, c. 605, §3 (AFF).]

[2001, c. 2, Pt. B, §58 (AFF); 2001, c. 2, Pt. B, §57 (COR) .]

2. Public utility facilities. Nothing in this section authorizes a natural gas utility to take by eminent domain property or facilities of another public utility, used or acquired for use in the performance of a public duty, unless expressly authorized in this section or by an act of the Legislature.

[1999, c. 605, §2 (NEW); 1999, c. 605, §3 (AFF) .]

3. Owner's consent required. A natural gas utility may not take, without the owner's consent:

- A. Meetinghouses; [1999, c. 605, §2 (NEW); 1999, c. 605, §3 (AFF).]
- B. Dwelling houses; or [1999, c. 605, §2 (NEW); 1999, c. 605, §3 (AFF).]

C. Public or private burying grounds. [1999, c. 605, §2 (NEW); 1999, c. 605, §3 (AFF).]

[1999, c. 605, §2 (NEW); 1999, c. 605, §3 (AFF) .]

4. Public lands. A natural gas utility may not take by eminent domain lands or rights in:

A. A public street or highway; [1999, c. 605, §2 (NEW); 1999, c. 605, §3 (AFF).]

B. A public park or reservation; [1999, c. 605, §2 (NEW); 1999, c. 605, §3 (AFF).]

C. Other public property; or [1999, c. 605, §2 (NEW); 1999, c. 605, §3 (AFF).]

D. The location of a railroad or public utility. [1999, c. 605, §2 (NEW); 1999, c. 605, §3 (AFF).]

[1999, c. 605, §2 (NEW); 1999, c. 605, §3 (AFF) .]

5. Pipeline constructed under or through public property. A natural gas utility may construct a natural gas pipeline under or through a public highway or street, public park or reservation or other public property if the method, plans and specifications for construction have been approved by the authority having jurisdiction over the maintenance of the public highway or street, public park or reservation or other public property and the authority has granted a written location permit to the utility in accordance with section 2302. The natural gas utility has all the rights, privileges and duties arising out of section 2302 to the extent they apply to a natural gas utility.

[1999, c. 605, §2 (NEW); 1999, c. 605, §3 (AFF) .]

6. Pipelines constructed over or across railroad or public utility. A natural gas utility may construct a natural gas pipeline over or across the location of a railroad or public utility by agreement with the railroad or public utility or, in the event of failure to agree, with the commission's approval and in a place and manner and under conditions determined by the commission. Notwithstanding subsection 4, paragraph D, the commission's approval of a natural gas utility's crossing of a railroad may include authorization pursuant to this section for the natural gas utility to take by eminent domain an easement across the railroad. For purposes of this section "railroad" includes, but is not limited to, a railroad whose abandonment has been approved pursuant to 49 United States Code, Chapter 109. This subsection does not permit the commission to authorize the taking of an easement over lands owned by the State. All work on the property of a railroad or public utility must be done under the supervision and to the satisfaction of the railroad or public utility, but at the natural gas utility's expense.

[2001, c. 608, §4 (AMD) .]

SECTION HISTORY

1999, c. 605, §2 (NEW). 1999, c. 605, §3 (AFF). RR 2001, c. 2, §B58 (AFF). RR 2001, c. 2, §B57 (COR). 2001, c. 608, §4 (AMD). 2011, c. 197, §3 (AMD).

§4711. CONSERVATION PROGRAMS **(REPEALED)**

SECTION HISTORY

2005, c. 110, §1 (NEW). 2009, c. 122, §17 (AMD). 2009, c. 372, Pt. A, §10 (AFF). 2009, c. 372, Pt. A, §8 (RP).

§4712. GAS EMERGENCY RESPONSE

1. Definitions. As used in this section, unless the context otherwise indicates, "gas explosion event" means an explosion or fire that causes property damage or personal injury and that involves natural gas or liquefied petroleum gas controlled, transported or delivered by a gas utility or a natural gas pipeline utility subject to the jurisdiction of the commission.

[2011, c. 27, §3 (NEW) .]

2. Response. Following a gas explosion event, the commission shall immediately contact the State Fire Marshal:

A. To confirm that the State Fire Marshal is investigating the event and securing evidence in accordance with Title 25, section 2394, subsection 1 and to coordinate the commission's activities with the State Fire Marshal's investigation; or [2011, c. 27, §3 (NEW) .]

B. To confirm that the event does not warrant investigation by the State Fire Marshal pursuant to the protocol established in accordance with Title 25, section 2394, subsection 1. [2011, c. 27, §3 (NEW) .]

[2011, c. 27, §3 (NEW) .]

3. Proceedings. In any commission proceeding concerning a gas explosion event, the commission shall afford a person injured by the event or who suffered property damage in the event an opportunity to address the commission regarding the event.

[2011, c. 27, §3 (NEW) .]

4. Compensation. In determining pursuant to section 117 whether to apply any administrative penalties relating to the gas explosion event to benefit customers affected or potentially affected by the violation, and in determining the amount to apply, the commission shall consider documented property damages suffered by a person as a result of the event and may apply an amount to equitably compensate that person for losses not otherwise fully compensated.

[2011, c. 27, §3 (NEW) .]

SECTION HISTORY

2011, c. 27, §3 (NEW) .

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